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C O N F I D E N T I A L SECTION 01 OF 06 BRUSSELS 000585

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DEPT FOR DRL KOZAK, DRL/MLA, IO/SHA AND EUR/ERA

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SUBJECT: US/EU HUMAN RIGHTS CONSULTATIONS: PREPPING FOR CHR

Classified By: USEU/POL Harry O'Hara, reasons 1.4 b/d.

1. (SBU) Summary: US and EU officials met in Brussels February 3 in regularly scheduled human rights consultations (COHOM) to prepare for the spring UN Commission on Human Rights (CHR), and to review the human rights situation in China and Iran. Also discussed were the Global War on Terrorism (GWOT) and promoting human rights, anti-Semitism in Europe, the UN high-level panel (HLP) report, EU support for Magen David membership in the ICRC and EU support for the UN Voluntary Funding for Victims of Torture. The CHR discussion concentrated on Turkmenistan, Uzbekistan, Belarus, Chechnya/Russia, Sudan (and the ICC), DRC, Burundi, Zimbabwe, Afghanistan, Israel, East Timor, Colombia, and Cuba. End Summary

COHOM Participants:

2. (U) The EU side was led, in their EU presidency role, by Ambassador Julien Alex, Luxembourg Ministry of Foreign Affairs (MFA) and Anne Goedert, also from the Luxembourg MFA human rights division. Representing the European Commission was Rolf Timans, Head of the Human Rights Unit at DG-external relations (RELEX). From the Council Secretariat were the newly appointed Personal Representative to Hi-Rep Solana on Human Rights, Michael Matthiessen (a newly created position), Jim Cloos, Council Secretariat Director for Human Rights (and also for UN and Transatlantic Affairs), and Council human rights expert, Hadewych Hazelzet. Alex Hall Hall, the human rights director from the UK Foreign Office, represented the UK in its forthcoming Presidency role. On the US side were DRL Acting Assistant Secretary Ambassador Mike Kozak, IO/SHA Director Bill Lucas, DR/MLA Amy McKee and USEU/POL Harry OHara (note-taker).

CHR prioritizing

3. (C) Ambassador Alex stressed that Luxembourg as the EU President was concerned that EU could dissipate its efforts if it spread itself in too many directions with too many countries. He said the EU Presidency would seek to focus at CHR on doing what is feasible and would encourage EU member-states to prioritize their efforts. UK human rights director Hall-Hall, speaking as part of the EU troika, pledged that the EU would try to avoid surprises for the US at Geneva. Alex identified the EU's current understanding of its CHR priority countries as Belarus, Turkmenistan, Uzbekistan, DRC, Sudan, Afghanistan, Burma, North Korea, and East Timor. He said that the EU is also considering adding Zimbabwe (if there is EU member-state consensus) to its priorities. While the EU would be interested in considering Chechnya and, possibly, China, resolutions, Alex noted that the EU is concerned with the consequences of losing on these resolutions. Kozak also identified less one-sided and obsolete Israel resolutions, and Cuba as US CHR priorities.

Turkmenistan

4. (C) Alex said that since a resolution on Turkmenistan had been run at the fall UNGA 3rd Committee, the EU had decided not to run a CHR resolution this spring. Kozak said the US agreed with this but suggested that the US and the EU might delay sharing this with Turkmenistan in an effort to get something from them, e.g. Red Cross access to prisoners. EC Rep Timans asked if our two Embassies in the field could be asked to come up with something measurable that we might jointly ask for. After some discussion, US/EU participants suggested that ICRC access to prison, cooperation with UN mechanisms and increased NGO access could be three things to seek Turkmenistan concessions before informing them that a resolution would not be run against them this spring. In addition both sides agreed to ask our Embassies in the field to see what could be asked for and if the three items listed above might be feasible.

Uzbekistan

5. (C) Alex said that the EU was undecided between seeking an Item 9 resolution or Item 19 on Uzbekistan. The EU has been seeing recent human rights improvements in Uzbekistan but some member states were not sure how deep these improvements

were. After agreeing that the picture was mixed, Kozak noted recent progress in the treatment of detainees, greater police cooperation with human rights defenders and the government now permitting Freedom House to operate and examine prison deaths. On the other hand, Kozak said that political parties and individuals not associated with the regime had not been allowed to register in forthcoming elections. Kozak urged that the EU consider an Item 19 approach and that the US and the EU suggest to the Uzbek government that if they would make progress on habeas corpus, we would consider an Item 19 vice an Item 9. Alex said that the current EU view is more 19 but not ready to reject a 9. After some discussion, the US and EU agreed to add the situation of NGOs into the bundle of things we would like from Uzbeks and then work together and to ask our respective heads of mission in the field to see what we could ask the Uzbeks to do. Commission official Timans demurred from the Luxembourg offer and said that the EU member states are split on an Item 19 vs. an Item 9. He suggested that the EU could play the 9 card (as a hard cop) against the Uzbeks. Kozak replied that the US would have a problem with supporting an Item 9 against Uzbekistan. Alex indicated that in the case of an Item 19 resolution the EU and US would coordinate for drafting and tabling.

#### Belarus

16. (C) Alex opened by asking if the US is jumping off the train on a Belarus resolution at CHR this year. He said that the EU wants to lead on Uzbekistan but wants the US to lead on Belarus. He noted that the EU is ready to help on Belarus including with joint lobbying. Kozak welcomed the chance to clear up EU confusion. He said Belarus, as an outpost of tyranny, was a must-win at the CHR. He asked that the EU confirm their agreement to lobbying and their willingness to be tough on Belarus. Kozak said that the US would like the EU to be prepared to tell third countries, e.g. in Latin America, that Belarus is a must-win for the EU, just as the US will say on Cuba. Alex replied that co-tabling and co-drafting would be okay. EC rep Timans noted that the EU member states wanted the US to take the lead on Belarus and that member states already felt that the EU is taking on too much for Geneva this year. He said that the EU would have to go back to the member states to review the entire list of initiatives before responding about leading on Belarus. Kozak urged that the EU do precisely that, namely go back to the member states. Kozak said that the US wants the EU to show its flag on this issue. If at the end of the day, the EU cannot lead on Belarus, the US will do it, Kozak said. The EU then agreed that they would get back to the US. Later over lunch, Alex reiterated the EU strongly felt belief that the US lead on Belarus in Geneva. Kozak replied that if the EU would not do it, then the US will take the lead. Kozak offered that, as an alternative, the US could draft if the EU will do the negotiations. That way the Europeans might have a more public face on the resolution. US would lobby for the draft, of course, in any event.

#### Chechnya/Russia

17. (C) UK rep Hall-Hall noted that the we have lost 4 times on a Chechnya resolution and the EU expects that Russia to be very tough on fighting this resolution this spring. Both the US and the EU agreed that Chechnya poses a dilemma. Kozak stressed that not only do we have ongoing concerns about Chechnya, but also our human rights concerns with Russia are growing. He wondered if the EU and the US, working together, might find alternative ways to signal unhappiness with Russia ) perhaps in some language on elections in a thematic resolution where a Russian example would be cited without mentioning Russia by name. Timans noted public pressure in Europe to do something on Russia but suggested that if we push too hard on Russia, we might lose on Belarus. Timans said that perhaps we could consider using the OSCE more on our Russia concerns but added that this would be tricky. UK rep Hall-Hall wondered if we want press Russia in the Community of Democracies where Russia is a member. Alex noted that Russian and the EU will have human rights consultations on March 1 but added there was no agenda for the meeting. Returning to Chechnya, Alex said that EU civil societies would expect the EU to try to do something on Chechnya in Geneva. After further discussion, both sides agreed to work together to see if something might be done jointly on using thematic resolutions to raise concerns about Russia. In addition, both sides agreed to look for opportunities to say similar things about Chechnya.

#### Sudan/ICC

18. (C) Despite losing last time on Sudan, Alex said that the EU and the US must do something on Sudan, as the situation is worse now than it was before. He told us that Luxembourg Presidency sees the UNSC discussion on Sudan and the recommendation of an ICC referral as complex. Kozak said that the US will press the UNSC for sanctions and the principle of accountability will guide our policies. He stressed to the EU that the US does not want Sudan to become a battleground over

our ICC differences. We are not asking the EU to give up its position on ICC in order to get accountability in Sudan; the EU should not expect the US to prejudice its position on ICC either. In addition, the US does not want to see any CHR resolution on Sudan that is weaker than what might emerge from the UNSC. Kozak also stressed that the US does not want to see a failed Sudan resolution. Alex replied that the EU was waiting for a political signal from their internal political and security committee on how much the EU should push the ICC at Geneva or New York. Timans said that the EU was aware of the US position on the ICC and does not want UNSC discussion on Sudan to get bogged down over the ICC. Speaking personally, Timans noted widespread European outrage over Sudan and strong pressure to go to the ICC as being faster than a special tribunal for ensuring accountability. Kozak noted that the US has no flexibility on the ICC and that we have to work around this. We had put forward an alternative that would bring accountability in a timely way without prejudicing anyone's position on the ICC. Kozak stressed the need to see what happens at the UNSC before deciding what needs to be done in Geneva Council Secretariat rep Hazelzet replied that the EU view is they would like to see a special rapporteur on Sudan and for that they need a CHR resolution or decision. Kozak replied that let us agree that for whatever gets done at CHR, that it not be less than what comes from the UNSC. He further indicated that the US would seek to avoid either a weak text or a failed resolution. The EU agreed.

DRC, Burundi, Zimbabwe

9. (C) Alex rep told us that the EU is working with the African Union on the DRC and Burundi. If talks with the AU are fruitless, or they are unable to decide upon strong texts in the short-term, the EU might go it alone with country resolutions. On Zimbabwe, the EU member states remain divided on what to do. Alex wondered if there is any way that the EU could actually win if it ran a resolution against Zimbabwe or whether, in fact, the EU should run a resolution, knowing that it will lose. Hazelzet wondered if the EU might consider something pointed against Zimbabwe in a thematic resolution rather than a country resolution.

Afghanistan

10. (C) Alex asked for US views on the Italian resolution on Afghanistan, Kozak emphasized that while we have no problem with the idea of an independent expert helping the Government of Afghanistan to develop its human rights program, the incumbent for Afghanistan has done everything but carry out his mandate. Kozak added that the US supported OHCHR assistance to Afghanistan in formulating a Human Rights program but with a different independent expert, someone who would focus on helping the government get assistance for addressing human rights problems in Afghanistan rather than trying to go to Guantanamo. Kozak added that the US would open to a possible Chairman's statement on Afghanistan if it met these criteria.

11. (C) Hall-Hall asked if the US could support raising the situation of women in Afghanistan at the CHR. She said that if the US would be willing to consider this, then EU might drop raising this at the Special Commission on Women (where the US has opposed it). She asked that the US consider this option and noted that in order for the EU to be comfortable with dropping the CSW resolution gender issues and prison conditions must be addressed in the CHR text.

Israel

12. (C) Kozak asked that the EU work with the US to try to reduce the number of anti-Israel resolutions at the CHR. He said that piling on anti-Israeli resolutions does not help the peace process nor does it do anything to improve the human rights situation on the ground. Alex said that the EU's mid-east experts are making a list of all the resolutions on Israel with an eye to prioritizing them. He said that the EU would be interested in reconsidering those resolutions that are obsolete and that the US concern on this would be shared with the EU mid-east experts.

East Timor

13. (C) The EU said that the EU had not yet decided how to proceed on East Timor this year especially since Indonesia would be the chair this year.

Colombia

14. (C) Kozak urged that the EU support the idea of working with the Colombian government on its human rights problems. He said that Colombian government is not opposed to criticism, but that sometimes the UN organs seemed to criticize it for not adopting a specific bureaucratic approach to dealing with a problem rather than assessing how well it was doing at achieving the objectives of a recommendation. The Luxembourg Presidency replied that the EU

will seek an Item 3 chairman statement with updated language on the situation that reflects the progress Colombia has made, not just old text. They would not be going for a country resolution under Item 9 nor 19.

#### Cuba

15. (C) Kozak said that the US was considering running the Cuban resolution this year itself to avoid the delays and drafting issues we witnessed last year. He asked if the EU thought that a US lead would be counterproductive. He emphasized that EU co-sponsorship and member-state support would be important. He asked that if EU can not come to a common position to support the US that they allow ) early on -- member-states to support it. Kozak said that the US is still discussing the text of a Cuba resolution and that the US would welcome EU thoughts might be included in the resolution. Alex asked when the US could share a text and Kozak replied that he hoped that some language could be ready in 1-2 weeks. Council director Cloos said that he was quite sure that the US and the EU could find common ground on Cuba at CHR. Hazelzet noted that the EU shares the US assessment of the bad human rights situation in Cuba and said that she would see if the EU could provide the US with some bullet points on Cuba. Kozak noted that EU support for a Cuba resolution would give the EU a chance to show that the EU has not softened its position on Cuba. (Comment: No one on the EU seemed uncomfortable with the idea of the US would run the Cuban resolution this year. End comment)

#### Bad behavior in Geneva

16. (C) Kozak said that he hoped that the new government in the Ukraine might more favorable to addressing human rights issues than Kuchma had been, but it was hard to see much improvement in the composition of the commission otherwise. He said that the Africa was a particular problem and wondered given the amount of assistance the EU provides to Africa, why the EU could not do more. Timans replied that the wording of the EU development agreements specifically precluded trying to seek such leverage. Kozak said the US and the EU should also focus on Brazil, India, Jamaica and the South Africa to stop the drift towards increased resistance to country specific resolutions. He said that the US and the EU also need to be more rigorous about ensuring that country reps in Geneva actually vote their instructions from the capitals.

#### Thematics

17. (C) Alex said that the EU will continue to pursue thematic resolutions on the rights of the child, religious intolerance (that would also mention anti-Semitism and Islamophobia) and the death penalty (with special attention on the juvenile death penalty). He said that the US and the EU are unlikely to resolve differences on the first and third items and the EU anticipates that the US will call for votes. Kozak noted that the legal doctrine of persistent objection requires that the US voice its objections, otherwise language from these resolutions can be improperly asserted in US courts as a US interpretation of customary international law. Kozak asked the EU to consider repackaging rights of the child resolutions so that US could support them. The UK rep said that the EU is considering the option of a more targeted resolution on children for the Third Committee at UNGA this fall (when the UK holds the EU Presidency). The topic would likely be violence against children.

#### China

18. (C) Kozak updated the EU on the US DAS level human rights talks with the Chinese. He said that the US goal was to make human rights a positive feature in our relationship with China. He said that the US has not decided on what to do about China at CHR, adding that this would be depend on Chinas human rights performance. Kozak also reviewed in general terms the US three basket approach to the human rights dialogue with China. Alex said that the EU had just given the Chinese 80 cases of interest to prepare for the next round of the EU/China human rights dialogue, scheduled February 24-25 in Brussels.

#### Iran

19. (C) Alex said that the EU/Iran human rights dialogue remains stalled due to Iranian resistance. Regarding a CHR resolution on Iran, the EU is waiting to see what the Canadians do. Kozak said that Canada has been concerned that a resolution would lose in Geneva. We needed to consider what we might do on Iran apart from resolutions. Hazelzet said that Iranian human rights groups were eager for a new round of human rights dialogue with the EU but the Iranian government was resistant.

#### GWOT and Promoting Human Rights

20. (C) UK rep Hall-Hall, at the request of the EU

presidency, reviewed a long list of NGO and press accusations about various US actions in the GWOT. In that spirit, she noted concern in Europe about US double standards on promoting human rights and the GWOT as exemplified by Guantanamo. She said that US reservations on international human rights conventions had also raised questions. She also raised questions about US legal application of the Geneva conventions, renditions, ghost detainees, alleged omissions in defining cruel and degrading treatment etc. She said that the UK government was not perfect either and that therefore her points should not be seen as implying that the EU or its member-states were perfect. Timans singled out alleged US denial of access to due legal processes as particularly troubling for the EU. In his reply to each of their points, Kozak stressed the difference between the law applicable to enemy combatants in wartime and that applicable to criminals in peacetime. He also noted that it was not the US that had decided to exclude certain groups from coverage under the Geneva Conventions. Rather, the conventions are legal instruments, which by their terms apply only to certain combatants and not others. The US was applying customary international law and US policy to assure humane treatment of all whether or not they qualify for POW status under the Conventions. The US was not asserting a different standard for itself than for others. Detainees had had recourse to our courts and much of the evolution in procedure was due to the decisions of the courts. Kozak said that US will have a side event at CHR in which experts from US will brief several of the special procedures of the OHCHR, as well as a public discussion to discuss in more detail what we have done and are doing in Guantanamo. Follow-up

121. (C/NF) US participants were struck by the contrast in the EUs discussion of the GWOT and the rest of our consultations and indeed between this accusatory and emotional presentation and past EU discussions which have been more of the information gathering variety. On February 4, we reviewed with the Council Secretariat Hazelzet the rationale for the EUs approach to this topic especially since it had been so different from previous US/EU discussion of these issues. Hazelzet said that the EU human rights experts had decided February 2 that the EU should have an informal over lunch discussion of these concerns and had asked that Guantanamo and the use of the US as an excuse by Sudan and others to justify their misdeeds be raised with us. She also said that they had decided to ask the UK rep to raise these points on the grounds that a UK official could more easily talk to us about these sensitive topics. We replied that the problem with reciting a long list of press allegations about the US is that we found it hard to distinguish what the EUs concerns were. We noted that we had already publicly responded to these press allegations and accusations and wondered why they had been included. We explained that the US was not objecting to discussing difficult and sensitive issues, rather we felt that the long recital of newspaper items was not conducive to the kind of dialogue that either side sought. She agreed that the EU ought to have better thought through how to structure this presentation. She also acknowledged that this exchange had taken up too much time at the expense of other items on our agenda.

#### Human rights aspect in High-Level Report

122. (C) Timans noted that the EU had reports from NY that Brazil was working to weaken the language in the UNSYG high-level report calling for country human rights reports.

#### Anti-Semitism

123. (C) Kozak noted US concerns over anti-Semitism in Europe. He said that OSCE discussion had been very good. Kozak noted that anti-Semitism in Europe seems to be growing among EU intellectuals ) something different than traditional forms of anti-Semitism among skinheads. Timans said the Commission has proposed the creation of an Agency on Fundamental Rights as a way of upgrading the current Racism Monitoring Center in Vienna. He said that the Commission hopes to present the Council with a proposal in May 2005 with a target date for opening the new agency by January 2007.

#### HLP Report, Magen David Adom and UN Voluntary Funding for Victims of Torture

124. (C) IO/SHA Director Lucas presented USG views on the High Level Panel reports recommendations on CHR, stressing that universalization does not effectively address CHR problems and suggesting several procedural and structural measures designed to improve the quality of CHR membership and leadership. Kozak urged the EU to weigh in with the Swiss government to call for a special meeting of the ICRC to discuss procedural steps for the entry of the Israeli Magen David Adom (MDA) society of Israel into the ICRC. Alex was not aware of this issue and said that the EU would have to get back to us. IO rep Lucas noted that the US funded about 75 percent of the UN voluntary fund for victims of torture. Timans, speaking for the Commission, replied that he was

unaware of this voluntary fund or the US contribution to it and asked for more information.

125. (U) DRL Kozak and IO/SHA Lucas cleared this message.

McKinley

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